

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Farm Nutrients, LLC

Sioux County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2012-AFO-07**

TO: Robert Malloy, Registered Agent
503 Main Street
P.O. Box 128
Goldfield, IA 50543

I. SUMMARY

This administrative consent order (order) is entered into between Farm Nutrients, LLC (Farm Nutrients) and the Iowa Department of Natural Resources (Department). Farm Nutrients hereby agrees to ensure that all of its manure applicators are properly certified prior to land application of manure and to pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provision.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jeff Prier, Environmental Specialist Senior
IDNR Field Office #3
2300 15th St SW
Mason City, IA 50401
641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or Iowa Code chapter 459 and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. During the month of November 2011, the Department received numerous complaints alleging unmarked commercial manure service vehicles were being used to transport manure from Center Fresh Egg Farm L.L.P. (Center Fresh) located in Section 14, Center Township, Sioux County Iowa.
2. On December 1, 2011, Sheila Kenny, an Environmental Specialist with the Department, conducted a complaint investigation. Once on site, Ms. Kenny observed Dan Jurrens hauling manure from Center Fresh. Mr. Jurrens was employed by Farm Nutrients to haul this manure. Ms. Kenny followed Mr. Jurrens approximately 50 miles to an application field in the NE ¼ of Section 17, Grand Meadow Township, Cherokee County, Iowa. No other applicators were observed in route to the field and Mr. Jurrens stated that he was the only employee hauling manure that day. Mr. Jurrens was not properly certified to haul manure and was unaware of the certification requirements.
3. On December 20, 2011, Mr. Jurrens obtained the certification required to haul manure.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.
2. 567 IAC 65.19(1) states "[a] commercial manure service or a commercial manure service representative shall not transport, handle, store or apply dry or liquid manure to land unless the person is certified." The above-mentioned facts indicate violations of this provision.

V. ORDER

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THEREFORE, the Department orders and Farm Nutrients agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Farm Nutrients shall ensure that all of its employees are properly certified to haul, apply or otherwise handle manure; and
2. Farm Nutrients shall pay a penalty of \$5,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Farm Nutrients did not ensure that its employees were properly certified prior to transporting, handling or land applying manure. Therefore Farm Nutrients has obtained an economic benefit from time saved by its employee not attending the proper class and from costs delayed by not timely paying the necessary fees. Therefore, \$100.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Transportation and land application of manure without proper certification increases the risk of a manure discharge and damage to the environment. Based on the above considerations, \$2,600.00 is assessed for this factor.

Culpability – All manure applicators have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. The owners of Farm Nutrients were well aware of the

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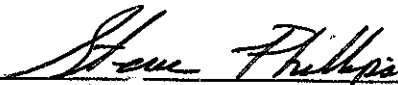
certification requirements; in fact, it has numerous certified employees. Nevertheless, it failed to ensure that Mr. Jurens was certified. Therefore, \$2,300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Farm Nutrients. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Steve Phillips, Farm Nutrients, LLC

Dated this 23 day of
February, 2012.



Roger L. Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1st day of
March, 2012.

Farm Nutrients, Field Office 2, Carrie Schoenebaum; Jeff Prier, VIII.D.4